

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROJELIO GONZALEZ,

Plaintiff,

v.

**AMERICAN SECURITY
INSURANCE COMPANY,**

Defendant.

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CIVIL ACTION No. 4:19-cv-3692

NOTICE OF REMOVAL

Defendant American Security Insurance Company (“American Security”) files this Notice of Removal against Plaintiff Rojelio Gonzalez (“Plaintiff”) pursuant to 28 U.S.C. §§ 1441 and 1446, as follows:

I. INTRODUCTION

1. This case is removable because there is complete diversity between the parties in this litigation and the matter in controversy exceeds \$75,000.00.

II. COMMENCEMENT AND SERVICE

2. On August 22, 2019, Plaintiff commenced this action by filing an Original Petition in the 165th Judicial District Court of Harris County, Texas, styled Cause No. 2019-58754, *Rojelio Gonzalez v. American Security Insurance Company*.¹

3. American Security received the service of process through its statutory agent on August 30, 2019.²

4. American Security timely filed an answer in state court on September 23, 2019.³

¹ See Ex. B-1, Plaintiff’s Original Petition.

² See Ex. A, Citation.

5. This Notice of Removal is filed within thirty days of the receipt, through service or otherwise, of Plaintiff's Original Petition and is timely filed under 28 U.S.C. § 1446(b)(1). This Notice of Removal is also filed within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(c).

III. GROUND FOR REMOVAL

6. American Security is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship.

IV. DIVERSITY OF CITIZENSHIP

7. This is an action with complete diversity of citizenship between the Plaintiff and Defendant.

8. Plaintiff is a citizen of Texas.⁴

9. Defendant American Security is a foreign insurance company.⁵

10. No change of citizenship has occurred for the parties since commencement of the state court action. Accordingly, diversity of citizenship exists among the remaining parties to the litigation.

V. AMOUNT IN CONTROVERSY

11. In the Fifth Circuit, a defendant who is served with a pleading requesting an indeterminate amount of damages has two options. The defendant may (1) remove the case immediately, if it can reasonably conclude that the amount in controversy exceeds \$75,000.00, or

³ See Ex. B-2, Defendant's Original Answer.

⁴ See Ex. B-1, Plaintiff's Original Petition, ¶ 1; Ex. G-1, Accurint Comprehensive Address Report, at p. 2 (demonstrating that Plaintiff has been domiciled in Texas since at least 1998).

⁵ See Ex. H, Affidavit of Carmen Collazo.

(2) the defendant may wait until the plaintiff expressly pleads that the amount in controversy exceeds that amount or serves some “other paper” indicating that the amount in controversy exceeds that amount. 28 U.S.C. §§ 1446(b)(3), (c)(3)(A); *Bosky v. Kroger Texas LP*, 288 F.3d 208, *passim* (5th Cir. 2002). Here, this case became removable upon the receipt of Plaintiff’s Original Petition wherein Plaintiff asserted that he seeks monetary relief over \$200,000.00.⁶ Thus, Plaintiff’s Original Petition establishes that the total amount in controversy in the action exceeds the sum of \$75,000.00, and this Court has jurisdiction pursuant to 28 U.S.C. § 1332.

VI. VENUE

12. Venue lies in the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed the state court action in this judicial district and division.

VII. CONSENT TO REMOVAL

13. No Consent to Removal is necessary as American Security is the only named defendant in this lawsuit.

VIII. NOTICE

14. American Security will give notice of the filing of this Notice of Removal to all parties of record pursuant to 28 U.S.C. § 1446(d). American Security will also file with the clerk of the state court, and will serve upon Plaintiff’s counsel, a notice of the filing of this Notice of Removal.

IX. STATE COURT PLEADINGS

15. Copies of all state court pleadings and orders are attached to this Notice of Removal.

⁶ See Ex. B-1, Plaintiff’s Original Petition, ¶ 64.

X. EXHIBITS TO NOTICE OF REMOVAL

16. The following documents are attached to this Notice as corresponding numbered exhibits:

- A. All Executed Process in this case;
- B. Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions, and all answers to such pleadings;
 - 1. Plaintiff's Original Petition;
 - 2. Defendant American Security Insurance Company's Original Answer;
- C. Docket Sheet;
- D. An index of matters being filed;
- E. A list of all counsel of record, including addresses, telephone numbers, and parties represented;
- F. Civil Cover Sheet;
- G. Affidavit of Brian A. Srubar;
 - 1. Accurant Comprehensive Address Report for Rojelio Gonzalez;
- H. Affidavit of Carmen Collazo.

XI. CONCLUSION

WHEREFORE, Defendant American Security Insurance Company, pursuant to the statutes cited herein, removes this action from the 165th Judicial District Court of Harris County, Texas to this Court.

Dated: September 27, 2019

Respectfully submitted,

MCDOWELL HETHERINGTON LLP

By: /s/ Bradley J. Aiken

Bradley J. Aiken

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on September 27, 2019, on the following counsel of record by Certified Mail:

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